

MARICOPA COUNTY BOARD OF SUPERVISORS MINUTE BOOK

**SPECIAL SESSION
April 24, 2006**

The Board of Supervisors of Maricopa County Arizona convened in Special Session at 11:08 a.m., April 24, 2006, in the Board of Supervisors' Conference Room, 301 W. Jefferson, Phoenix, Arizona, with the following members present: Don Stapley, Chairman, District 2; Fulton Brock, Vice Chairman, District 1, Andrew Kunasek, District 3 (left during Executive Session), Max W. Wilson, District 4 and Mary Rose Wilcox, District 5 (entered during Executive Session). Also present: Fran McCarroll, Clerk of the Board; Shirley Million, Administrative Coordinator; David Smith, County Manager; Bruce White, Deputy County Attorney. Votes of the Members will be recorded as follows: aye-nay-absent-abstain.

CHAIRMAN'S PREROGATIVE

Chairman Stapley said that the agenda called for the Board to first meet in Executive Session for legal advice on the County Island Fire Districts case, CV2006-004754, however, the Chairman deemed that was unnecessary at this time in lieu of a briefing by counsel to bring the Board up-to-date on that matter and report on the hearing held last Friday.

GILBERT COUNTY ISLAND FIRE DISTRICT

Chairman Stapley called for a public hearing to determine the certification of the Gilbert County Island Fire District and possible appointment of District Board Members, pursuant to A.R.S. §48-261(H). The hearing will include consideration of validity and sufficiency of signatures on petitions evidencing more than one half of the aggregate number of real property owners in area of proposed Gilbert County Island Fire District. (ADM4450)

Chris Keller, Chief Counsel, Civil Division
Bruce White, Deputy County Attorney
Kevin Costello, Deputy County Attorney
Gary Lassen, Outside Counsel

Bruce White explained that no word has been received from the Department of Justice (DOJ) on the pre-clearance process and today at 5:00 p.m. is the deadline for that response, however, there is a procedure by which that deadline can be extended. He suggested that procedurally the Board could receive the certification documents from the Clerk and the Assessor regarding the verification results and listen to public comment, but wait for the full time period for DOJ to respond before proceeding with a vote on this issue.

Gary Lassen said the hearing last Friday produced a renewed argument for a temporary restraining order from plaintiffs. The court entered an order enjoining the statute's applicability only as it applied to the Town of Gilbert, "and purposefully said this Board is free to go forward with the formation of the District." The trial on merit convenes tomorrow, April 25th. He concurred with the suggestion given by Mr. White not to vote until the deadline for the DOJ to return a pre-clearance has been passed.

At this time Chairman Stapley paused the meeting to recognize Representative Andy Biggs who sponsored the legislation on fire coverage in County Islands and extended an invitation for his comments or suggestions on the matter. County Assessor Keith Russell was also present in the audience.

Chairman Stapley declared the hearing on the Gilbert Fire Island Fire District to be opened and called for a report from the Clerk of the Board, Fran McCarroll, and County Assessor Keith Russell.

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Ms. McCarroll and Mr. Russell gave results regarding the delineation of district boundaries and the separate administrative processes, and resulting verification of petitions received, that were conducted by both offices. Mr. Russell explained that there was a slight discrepancy between the two findings but his office could verify and certify a total of

- 198 petitions were delivered with
- 1,866 signatures total
- 3,919 total parcels in the area
- 100 parcels were removed due to prior annexation
- 3,247 as the aggregate number of property owners
- 1,624 as the target number of valid signatures needed (half of the property owners)
- 1,866 valid signatures on the petitions
- Assessor's signature verification was 1,718
- Clerk's signature verification was 1,711

Chairman Stapley asked if both agreed that the petitions should be allowed as qualified and the district should be formed. Mr. Russell replied, "Yes, Mr. Chairman, as far as the verification goes it does appear that, based on the numbers before you, we have the "50 plus 1 threshold." Ms. McCarroll agreed and said that there appeared to be 87 signatures over the required minimum.

Chairman Stapley called for members of the public who wished to speak on this topic to come forward.

Marci Sale, a homeowner living in a Gilbert area County Island for 11 years, said that last November Rural Metro announced they would end their fire protection for the island areas after June 30, 2006. She thanked the County for supporting a fire district, believing that more than a thousand people would be without fire protection if no district is formed. She said that neither Queen Creek nor Gilbert would accept coverage of the Islanders for fires, drownings or other emergency services. Some areas are being annexed, which is what Gilbert wants to have happen, but many homeowners do not want annexation. She affirmed that she is very much in favor of forming a fire district.

Donna Davis, a homeowner in another Gilbert area County Island for 19 years, said, "I am definitely for the formation of the fire district." She felt the crux of the matter was to insure that every Arizona State citizen has fire and emergency coverage. She added that a district would provide an option that County Islanders would not otherwise have. "It would be absolutely unforgivable, and an enormous liability and exposure, if someone would die because of lack of response."

Daniel Barr, Town of Gilbert, asked the Board to withhold a vote until after a court ruling on the litigation that has been filed against the County by the Town of Gilbert. He said that the suit should conclude within the next two weeks and suggested that nothing would be lost by waiting. He read a letter from Gilbert Mayor, Steve Berman regarding the constitutionality of HB2145 and asking for the County to wait for the Judge to rule on the matter.

Supervisor Kunasek asked Gary Lassen if Judge Campbell had indicated any likelihood that the new law was unconstitutional. Mr. Lassen replied that Judge Colin Campbell said that in order to issue his temporary restraining order he had to make a finding that there was irreparable harm, but also, that the Town of Gilbert evidenced a strong likelihood of success on the merits. He added that the Judge had also made it very clear that this was a tentative decision based on the state of the record before him at that time and his mind would remain open to hear evidence. Mr. Lassen said the judge's main concern

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seemed to be that the law may conceivably only apply to the Town of Gilbert and thus violate the special legislation conditions.

Representative Andy Biggs joined the Board for discussion of the bill's constitutionality and the current state of this item. Representative Biggs said he had lived in the Town of Gilbert for 10 years and has also lived on a County Island for 10 years, and addressed several pertinent issues he has realized since authoring HB 2146. He referenced the court's TRO with regards to the Town of Gilbert not having to provide services if a district is formed, he asked the Board to understand that this "is really an order without any consequence" because the law requires an RFP go out to interested providers and "this law may never apply to the Town of Gilbert." He said the law requires the district to quickly issue a RFP to find a private or public provider of services and he reported that overtures have already been received from two different groups prior to the RFP being issued or a Board elected. He stated that there is a rational reason for the law, which was passed overwhelmingly by both houses and signed by Governor Napolitano, who said she understood the risk to those citizens. He explained that the reason the State needed to get involved is that there is the safety, welfare and life of citizens that is in jeopardy. He said the State was forced to act when dealing with a municipality that said, "we would rather see people burn." He assured the Board that they did have a rational basis for their concern and actions.

Representative Biggs said, "When you have a municipality, Town Councilmen and Mayor, that explicitly says 'you must annex or burn' and when those people have the authority to determine who will be allowed to annex, or not, you do see that there is an inherent problem with that." He added that there is grave potential for someone to be seriously hurt or lose their life savings and their property, and nobody would be responsible and those people would have no recourse. He said the previous law required a county to enter into an IGA with a municipality, which means that under that law a county had no authority to provide fire protection but had to contract for it, and, he added, "that law did not work."

Chairman Stapley said it was his understanding that firefighter organizations supported this legislation, understood the need for it and were influential in getting it through the legislature and signed by the Governor. Representative Biggs affirmed that they had supported it.

Supervisor Brock asked if any harm would be done if the Board should continue their decision for several weeks, since Rural Metro will provide coverage until June 30th. Bruce White knew of none and said a delay would not affect the verification of the count. However, he added that delaying for reasons other than awaiting the pre-clearance could have other impacts and he could see no other good reason for a delay. He said there is a new State law that has not been declared unconstitutional despite the fact that there is a group claiming its unconstitutionality. Their claim does not make it so. Mr. White added, "In our judgment, their claim is not a reason for the Board to delay taking whatever action the Board thinks is appropriate. Ultimately it is a discretionary decision on your part."

Supervisor Wilson said that there is a law that has passed the Legislature and been signed by the Governor and he believed the Board needed to operate under that law. He saw no reason not to proceed. Chairman Stapley supported this and said that names of five prospective board members have been submitted and if the DOJ pre-clearance is received yet today he would like to reconvene to form a district.

Tom Irvine, who represents the three residents who are being sued by the Town of Gilbert, said that the new statute has a 30-day period for RFP's and the sooner a district is formed the sooner these could be sent out. He opined that this case is headed to the State Supreme Court, through Superior Court Judge Colin Campbell, and time is of the essence with July 2 fast approaching and so many "legal way stations" to conclude between now and the end of this fiscal year.

RECESS

Chairman Stapley asked to recess "this portion of the meeting for 24 hours in order to address the pre-clearance expected from the Department of Justice before 5:00 p.m. today, and if this information is not received, to automatically go to a date certain based on the pre-clearance notification and a proper posting notice." Supervisor Brock said, "So moved," the motion was seconded by Supervisor Kunasek and unanimously carried (4-0-1).

RECESS TO EXECUTIVE SESSION

Pursuant to A.R.S. §38-431.03, et.al., motion was made by Supervisor Kunasek, seconded by Supervisor Brock, and unanimously carried (4-0-1) to recess and reconvene in executive session in the Tom Sullivan Conference Room, 301 W. Jefferson, for the purpose of obtaining legal advice from the Board's attorney in reviewing matters listed below pursuant to the listed statutory references. All members remained in session when the meeting reconvened.

LEGAL ADVICE; CONTRACTS SUBJECT TO NEGOTIATION – ARS §38-431.03(A)(3) AND (A)(4)

E-2. Municipal services provided by Maricopa County to Queen Creek, including a proposed IGA regarding the Queen Creek Landfill.

Joy Rich, Assistant County Manager
William Scalzo, Assistant County Manager
Bill Thornton, Director, Solid Waste Department
Bruce White, Deputy County Attorney
Kevin Costello, Deputy County Attorney

~ Supervisor Wilcox entered the meeting ~

PENDING OR CONTEMPLATED LITIGATION – ARS §38-431.03(A)(4)

E-3. Arizona Motorsports Park v. Maricopa County

Joy Rich, Assistant County Manager
Peter Crowley, Risk Management
Richard Hood, Outside Counsel
Chris Keller, Chief Counsel, Civil Division
Terry Eckhardt, Deputy County Attorney

LEGAL ADVICE; PENDING OR CONTEMPLATED LITIGATION; CONTRACTS SUBJECT TO NEGOTIATION – ARS §38-431.03(A)(3) AND (A)(4)

E-4. Advice regarding legal issues and options concerning County Regional School District/ Accommodations School funding, management and audit issues.

Chris Keller, Chief Counsel, Civil Division
Sandi Wilson, Deputy County Manager
Bruce White, Deputy County Attorney
Brian Hushek, Deputy Budget Director
Shelby Scharbach, Deputy Finance Director
Dean Wolcott, Outside Counsel
Tom Manos, Chief Financial Officer

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Ross Tate, County Auditor
Tom Irvine, Outside Counsel
Fred Rosenfeld, Outside Counsel
LeeAnn Bohn, Budget Manager

~ Supervisor Kunasek left the meeting and would not return ~

RECESS EXECUTIVE SESSION AND RECONVENE IN OPEN SESSION

Chairman Stapley reconvened the Board in open session to vote on the following items, Members remaining in session included Supervisors Brock, Wilson, Wilcox and Stapley.

QUEEN CREEK LANDFILL OPERATION

Motion was made by Supervisor Brock, seconded by Supervisor Wilcox, and unanimously carried (4-0-1) to approve Amendment No. 1 to the Landfill IGA No. C67040012, between Maricopa County and the Town of Queen Creek, which extends the effective date of the intergovernmental agreement regarding the Queen Creek Landfill until December 1, 2007. The additional expected revenues to Maricopa County for post-closure care are anticipated to be \$400,000. This item was continued from April 5, 2006 and April 19, 2006. (C6704001201)

EXCEPTION TO EMPLOYEE COMPENSATION PLAN

Motion was made by Supervisor Wilcox, seconded by Supervisor Brock, and unanimously carried (4-0-1) to request an exception to the Maricopa County Employee Compensation Plan; Section VI – Permanent Salary Advancements, granting approval of non-merit salary advancements retroactive to date of promotion and date of hire. These employees should receive the following salary advancements, Eiesha McCoy from \$12.62 an hour to \$13.43 an hour, Sharon Kostopoulos from \$12.62 an hour to \$13.43 an hour, Kenneth Anderssohn from \$12.62 an hour and to \$14.22 an hour, Allyn Constantin from \$12.62 an hour to \$13.82 an hour, Adam Brumm from \$15.45 an hour to \$18.16 an hour, Jesus Gonzalez from \$15.45 an hour to \$17.15 an hour, Cynthia Scheidt from \$15.45 an hour to \$17.65 an hour, Harvey Smith from \$15.45 an hour to \$17.65 an hour, Ryan Smith from \$15.45 an hour to \$17.15 an hour, Sandy Smith from \$15.45 an hour to \$19.23 an hour, Kathryn Stockton from \$17.79 an hour to \$19.23 an hour, Michael Wright from \$22.60 an hour to \$23.13 an hour, Mirel Tulei from \$17.40 an hour to \$23.13. (ADM3308-001) (C4406019000)

PERSONNEL AGENDA

Motion was made by Supervisor Wilcox, seconded by Supervisor Brock, and unanimously carried (4-0-1) to approve Maricopa County Planning and Development Personnel Agenda (Exhibit A). Exhibit A will be found at the end of this set of Minutes.

REGIONAL SCHOOL DISTRICT #509

The Board of Supervisors, pursuant to its authority granted in A.R.S. §15-1001, considered for approval vouchers presented by the County School Superintendent of Maricopa County to draw warrants on the County Treasurer against Maricopa County Regional School District #509 School District funds for necessary expenses against the school district and obligations incurred for value received in services as shown in the Vouchers. (ADM3814-003)

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Motion was made by Supervisor Brock, seconded by Supervisor Wilcox, and unanimously carried (4-0-1) regarding action on the following vouchers:

Approve Voucher No. 5159	\$43,108.07
Approve Voucher No. 122	\$340,834.94

The Board of Supervisors may consider ratifying any Maricopa County Regional School District #509 vouchers and/or warrants approved in accordance with the procedures of A.R.S. §15-321 since the last meeting of the Board of Supervisors. The Board of Supervisors may hear staff reports on the vouchers and warrants being considered. The Vouchers are on file in the Maricopa County's Clerk of the Board's office and are retained in accordance with ASLAPR approved retention schedule. (ADM3814-003)

No vouchers were presented for ratification.

Staff may update the Board of Supervisors on regional schools operations and finances. (ADM3814-005)
LeeAnn Bohn, Budget Administrator

EXCEPTION TO THE MARICOPA COUNTY EMPLOYEE COMPENSATION PLAN

Motion was made by Supervisor Brock, seconded by Supervisor Wilcox, and unanimously carried (4-0-1) to request an exception to the Maricopa County Employee Compensation Plan; Section VI – Permanent Salary Advancements, Planning and Development Department, granting approval of non-merit salary advancements retroactive to date of promotion and date of hire. These employees should receive the following salary advancements: Andrew Piper to \$23.08 an hour, Rachel Applegate to \$23.08 an hour, Grettel Vargas to \$24.46 an hour, Brian McCabe to \$23.66 an hour and Rick Houston to \$21.18 an hour. (Addendum item A-1) (C4406018000) (ADM3308-001) (ADM3400-001)

MEETING RECESSED

Chairman Stapley recessed the meeting for up to 24 hours, in expectation of receiving pre-clearance authorization from the Department of Justice (as noted earlier). The meeting would be reconvened at the Chairman's call for further consideration and/or action on the issue. If authorization is not received the meeting will adjourn and the matter will be considered on a future agenda.

MEETING ADJOURNED

Notification from the Department of Justice was not received within 24 hours, and no further business having come before the Board, the meeting was adjourned.

Don Stapley, Chairman of the Board

ATTEST:

Fran McCarroll, Clerk of the Board